

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

ROBERT JOSEPH SCHMITT, #1061867 §  
VS. § CIVIL ACTION NO. 4:19cv255  
DIRECTOR, TDCJ-CID §

## **ORDER OF DISMISSAL**

Petitioner Robert Joseph Schmitt, an inmate confined in the Texas prison system, proceeding *pro se*, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The cause of action was referred to United States Magistrate Judge Kimberly C. Priest Johnson, who issued a Report and Recommendation concluding that the petition should be dismissed as an unauthorized second or successive petition. Schmitt has filed objections.

Schmitt is challenging his Collin County conviction for two (2) counts of sexual assault of a child, Cause Number 296-81160-00. He previously submitted two petitions in this Court challenging the conviction. His first petition was dismissed with prejudice. *Schmitt v. Director, TDCJ-CID*, No. 4:06cv168 (E.D. Tex. Oct. 4, 2006). The Fifth Circuit affirmed the decision. *Schmitt v. Zeller*, 354 F. App'x 950 (5th Cir. 2009). His second petition was dismissed as an unauthorized second or successive petition. *Schmitt v. Director, TDCJ-CID*, No. 4:16cv818 (E.D. Tex. Feb. 26, 2018). The present petition was filed on April 4, 2019.

The present petition should be dismissed in light of 28 U.S.C. § 2244(b)(3)(A). This Court lacks subject matter jurisdiction to consider a second or successive petition unless the Fifth Circuit has granted the petitioner permission to file it. *Crone v. Cockrell*, 324 F.3d 833, 836 (5th Cir. 2003). A district court should dismiss a second or successive petition for lack of subject matter jurisdiction that has been filed without the permission of the Fifth Circuit. *Id.* at 838. In the present case, Schmitt has

not shown that he has received permission from the Fifth Circuit to file a second or successive petition. Moreover, a review of the Fifth Circuit's case information website reveals that the Fifth Circuit denied his motion to file a second or successive petition. *In re: Schmitt*, 18-10563 (5th Cir. June 8, 2018). Schmitt, nonetheless, filed the present petition. The petition should be dismissed for lack of subject matter jurisdiction.

In his objections, Schmitt admits that he has been undeterred in challenging his conviction. He states that he has been challenging his unlawful sentence for nine years. He may not, however, file a second or successive petition in this Court unless he is authorized to do so by the Fifth Circuit.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Schmitt to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Schmitt's objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

Accordingly, it is **ORDERED** that the petition for a writ of habeas corpus be **DISMISSED** without prejudice. A certificate of appealability is **DENIED**. All motions not previously ruled on are **DENIED**. The Clerk of Court shall return unfiled any new petitions for a writ of habeas corpus submitted by Schmitt unless he shows that he received permission from the Fifth Circuit to file it.

**SIGNED this 23rd day of April, 2019.**



AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE